

### **REMARKS/ARGUMENTS**

With this response, claims 1-76 are pending. Claims 12-32, 35, 36 and 41-76 are withdrawn as directed to non-elected subject matter. Claims 1-11, 33, 34 and 37-40 are subject to Examination. Claims 1, 3-6, 9, 33 and 37 are currently amended. Claim 2 is canceled.

#### **Specification Amendment**

In response to the Office's allegation that the "application fails to fully comply with the requirements of 37 C.F.R. § 1.821 through 1.825", with the Office citing page 7 paragraph 20 for containing "various amino acid sequences without corresponding sequence identifiers", Applicants provide replacement paragraph 20. The replacement paragraph contains sequence number identifiers for each of the various amino acid sequences in accordance with the table of sequence listing numbers contained in paragraph 20. This amendment does not constitute the addition of new matter.

#### **Claim Amendments**

Claim 1 is amended to incorporate the limitations of claim 2. Accordingly, claim 2 is canceled as redundant.

The remaining amendments to claims 3-6, 9, 33 and 37 correct claim dependency by changing the dependency from claim 2 (which is canceled) to claim 1.

These amendments do not constitute the addition of new matter. Applicant requests entry of the amendments to the specification and claims.

#### **Claim Rejections – 35 USC § 102**

**ITEM 9:** The Office cites Wright and Conticello, Adv. Drug Deliv. Rev., Oct 2002, 54:1057-73) (Applicants believe the Office inadvertently references the cite as Wright and Capello) under 35 U.S.C. 102(a) for rejecting claims 1-4, 8, 11, 33, 34 and 37-40.

The Wright and Conticello reference appeared less than one year before the earliest filing date of November 22, 2002 for U.S. Provisional App. No. 60/428,438 from which priority is claimed in the present application, as well as less than one year from the claim for foreign priority in Canada (1/29/2003), Japan (4/01/2003) and Australia (8/27/2003). Applicants have submitted, by express mail having a mailing date of February 3, 2009, the original certified copies of each of the foreign applications from which foreign priority is claimed in accordance with the Office's request under 35 U.S.C. § 119(b)(3).

Applicants believe Wright and Conticello is not properly available as prior art to the present application because it is not "by others" as required by 35 U.S.C. § 102(a). As clarified in *In re Katz*, 215 USPQ 14, 17 (CCPA 1982), "one's own work is not prior art under § 102(a) even though it has been disclosed to the public in a manner or form which otherwise would fall under § 102(a)." Furthermore, *Ex parte Maner*, 133 USPQ 404, 405 (BPAI 1961) clarified that a publication by less than all the inventors published less than one year before the application filing date may be removed as a reference by the filing of an affidavit by the authors.

Applicants submit herewith an executed Declaration which establishes the cited Wright and Conticello reference represent Applicants' own work, and it should not be cited against this application in view of the publication is less than one year prior to the filing date of the patent applications from which this application claims priority.

Inventors Elizabeth R. Wright and Vincent P. Conticello are coauthors of the Wright and Conticello reference. Attached is a Declaration under 37 C.F.R. 1.132 by Drs. Wright and Conticello. The Declaration states that the inventive entity is correct and that the Wright and Conticello reference was prepared at least in part from the work of the inventive entity listed in the patent application (e.g., Elliot L. Chaikof, Karthik Nagapudi, William T. Brinkman, Vincent P. Conticello, Robert A. McMillan, Elizabeth R. Wright and Sonha C. Payne).

In view of the above arguments and evidence, the Wright and Conticello reference is not a proper 35 U.S.C. § 102(a) reference. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

**ITEM 10:** The Office cites Wright et al., Adv. Funct. Mater., Feb 2002, 12:149-54) under 35 U.S.C. 102(a) for rejecting claims 1-3, 5, 33, 34 and 37-40.

The Wright et al. reference appeared less than one year before the earliest filing date of November 22, 2002 from which priority is claimed in the present application, as well as less than one year from the claim for foreign priority for the corresponding Canadian patent application (filed 1/29/2003). Applicants have submitted, by express mail having a mailing date of February 3, 2009, the original certified copy the foreign Canadian application from which foreign priority is claimed in accordance with the Office's request under 35 U.S.C. § 119(b)(3).

Applicants believe Wright et al. is not properly available as prior art to the present application because it is not "by others" as required by 35 U.S.C. § 102(a). As clarified in *In re Katz*, 215 USPQ 14, 17 (CCPA 1982), "one's own work is not prior art under § 102(a) even though it has been disclosed to the public in a manner or form which otherwise would fall under § 102(a)."

Applicants submit herewith an executed Declaration which establishes the cited Wright et al. reference represent Applicants' own work, and it should not be cited against this application in view of the publication is less than one year prior to the filing date of the patent applications from which this application claims priority.

Inventors Elizabeth R. Wright, R. Andrew McMillan and Vincent P. Conticello are coauthors on the Wright et al. reference. Attached is a Declaration under 37 C.F.R. 1.132 by Drs. Wright, McMillan and Conticello. The Declaration states that the coauthors Alan Cooper and Robert P. Apkarian did not make any original and inventive contributions to the claimed copolymer materials and research results related to the

disclosure in the Wright et al. reference. Further, the Declaration confirms that the inventorship of the current application is correct and that the coinventors not named as authors in the Wright et al. reference contributed to the conception and reduction to practice of the claimed invention. Accordingly, the Wright et al. reference is the inventors' own work, and thus, is not properly available as prior art to the present application.

In view of the above arguments and evidence, the Wright et al. reference is not a proper 35 U.S.C. § 102(a) reference. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

**ITEM 11:** The Office cites Capello et al. (J. of Controlled Release, 1998, 53:105-117) in alleging claims 1 and 11 are not patentable under 35 U.S.C. § 102(b).

This rejection is believed to be obviated in view of the amendment to claim 1. In particular, claim 1 is directed to a protein triblock copolymer having a middle hydrophilic block flanked on either end by hydrophobic endblocks. Capello et al. does not teach or disclose such a structure. Instead, Capello relates to protein polymers made from two blocks (made from one silklike and one elastinlike block). Accordingly, Capello et al. does not teach or suggest the copolymer structure of claim 1 and Applicants request the 102(b) rejection of claim 1 be reconsidered and withdrawn.

Because Capello does not teach or suggest the structure recited in claim 1, it certainly does not teach or suggest the specific protein structures recited in claims 4-10.

Claim 11 depends from claim 1. Because Capello et al. does not teach or suggest the copolymer of claim 1, Applicants request the 102(b) rejection of claim 11 be reconsidered and withdrawn.

**ITEM 12:** The Office cites Lee et al. (Adv. Materials, 2000, 12(15):1105-10) in alleging claims 1 and 11 are not patentable under 35 U.S.C. § 102(b).

This rejection is believed to be obviated in view of the amendment to claim 1. In particular, claim 1 is directed to a protein triblock copolymer having a middle hydrophilic block flanked on either end by hydrophobic endblocks. Similarly to Capello et al., Lee et al. does not teach or disclose such a structure. Instead, Lee et al. relates to two blocks, a lipophilic and hydrophilic block (see Scheme 1 on p. 1106). Accordingly, Lee et al. does not teach or suggest a copolymer having a middle hydrophilic block flanked on either end by hydrophobic endblocks as recited in pending claim 1. Applicants, therefore, request the 102(b) rejection of claim 1 be reconsidered and withdrawn and claim 11 which depends therefrom.

### **CONCLUSION**

In view of the foregoing, it is submitted all pending claims are believed allowable and in condition for allowance. Passage to issuance is, therefore, respectfully requested. Applicants understand that claim 1 is considered to link the various inventions. Accordingly, Applicants request the withdrawn claims be rejoined upon claim 1 being found allowable.

### **REQUEST FOR EXTENSION OF TIME**

It is believed that fees for three months extension of time are due in the amount of \$555 for a small entity. The undersigned hereby authorizes that such amount be deducted from Deposit Account No. 07-1969 if the fee is not otherwise paid by EFS-Web. If this amount is incorrect or as necessary please credit any overpayment or deduct the appropriate fee, including any fee for any extensions of time required, from Deposit Account No. 07-1969.

Respectfully submitted,

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